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9 **BEFORE THE**
RESPIRATORY CARE BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

Case No. 1H-2008-385

13 JOHN H. ELHAMI
712 Aster Street
14 Upland, CA 91786

STATEMENT OF ISSUES

15 Respondent.

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17 Complainant alleges:

18 PARTIES

19 1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Executive Officer of the Respiratory Care Board of California.
21 2. On or about June 4, 2008, the Respiratory Care Board of California
22 (Board) received an application for a Respiratory Care Practitioner License from JOHN H.
23 ELHAMI (respondent). On or about May 30, 2008, respondent certified under penalty of perjury
24 to the truthfulness of all statements, answers, and representations in the application. The Board
25 denied the application on or about October 16, 2008.

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JURISDICTION

3. This Statement of Issues is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 3710 of the Code states, in pertinent part, that “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

6. Section 3750 of the Code states:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“...

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

“...

“(j) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a respiratory care practitioner.

“...”

7. Section 3732 of the Code states:

“(a) The board shall investigate an applicant for a license, before a license is issued, in order to determine whether or not the applicant has the qualifications required by this chapter.

“(b) The board may deny an application, or may order the issuance of a license with terms and conditions, for any of the causes specified in

1 this chapter for suspension or revocation of a license, including, but not
2 limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6,
3 3755, 3757, 3760, and 3761.”

4 8. Section 3752 of the Code states,

5 “A plea or verdict of guilty or a conviction following a plea of nolo
6 contendere made to a charge of any offense which substantially relates to
7 the qualifications, functions, or duties of a respiratory care practitioner is
8 deemed to be a conviction within the meaning of this article. The board
9 shall order the license suspended or revoked, or may decline to issue a
10 license, when the time for appeal has elapsed, or the judgment of
11 conviction has been affirmed on appeal or when an order granting
12 probation is made suspending the imposition of sentence, irrespective of a
13 subsequent order under Section 1203.4 of the Penal Code allowing the
14 person to withdraw his or her plea of guilty and to enter a plea of not guilty,
15 or setting aside the verdict of guilty, or dismissing the accusation,
16 information, or indictment.”

17 9. Section 3754 of the Code states: “The board may deny an
18 application for, or issue with terms and conditions, or suspend or revoke, or impose
19 probationary conditions upon, a license in any decision made after a hearing, as provided
20 in Section 3753.”

21 10. California Code of Regulations, title 16, section 1399.370, states, in
22 pertinent part:

23 “For the purposes of denial, suspension, or revocation of a license, a
24 crime or act shall be considered to be substantially related to the
25 qualifications, functions or duties of a respiratory care practitioner, if it
26 evidences present or potential unfitness of a licensee to perform the
27 functions authorized by his or her license or in a manner inconsistent with
28 the public health, safety, or welfare. Such crimes or acts include but are not

1 limited to those involving the following:

2 (a) Violating or attempting to violate, directly or indirectly, or
3 assisting or abetting the violation of or conspiring to violate any provision
4 or term of the Act.

5 (b) Conviction of a crime involving fiscal dishonesty, theft or
6 larceny.

7 “...”

8 COST RECOVERY

9 11. Section 3753.5, subdivision (a) of the Code states:

10 “In any order issued in resolution of a disciplinary proceeding
11 before the board, the board or the administrative law judge may direct any
12 practitioner or applicant found to have committed a violation or violations
13 of law to pay to the board a sum not to exceed the costs of the investigation
14 and prosecution of the case.”

15 12. Section 3753.7 of the Code states:

16 “For purposes of the Respiratory Care Practice Act, costs of
17 prosecution shall include attorney general or other prosecuting attorney
18 fees, expert witness fees, and other administrative, filing, and service fees.”

19 13. Section 3753.1 of the Code states:

20 “(a) An administrative disciplinary decision imposing terms of
21 probation may include, among other things, a requirement that the
22 licensee-probationer pay the monetary costs associated with monitoring the
23 probation.

24 “...”

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1 FIRST CAUSE FOR DENIAL OF LICENSE

2 (Conviction of Crimes Substantially Related to the Qualifications,
3 Functions, or Duties of a Respiratory Care Practitioner)

4 14. Respondent's application is subject to denial under section 3750, as
5 defined by section 3750, subdivision (d), and Title 16, California Code of Regulations,
6 section 1399.370, subdivision (b) in that respondent has been convicted of a crime
7 substantially related to the qualifications, functions, or duties of a Respiratory Care
8 Practitioner, as more particularly described in paragraphs 15 through 18, below.

9 15. On or about January 27, 2006, respondent, while an employee of
10 the University of Southern California University Hospital, was observed going through the
11 wallet of a patient. Respondent realized he was being observed and turned the wallet into
12 a floor secretary. Respondent was terminated from employment due to this incident.

13 16. On or about April 17, 2006, a criminal complaint was issued against
14 respondent in the case entitled *People of the State of California v. John Hossein Elhami*,
15 Los Angeles Superior Court Case 6CA17854, for the following criminal counts committed
16 at the University of Southern California University Hospital:

17 (a) Theft of property in violation of Penal Code section 484,
18 subdivision (a), a misdemeanor; and

19 (b) Appropriation of lost property in violation of Penal Code section
20 485, a misdemeanor.

21 17. On or about July 17, 2006, respondent was convicted on his plea of
22 nolo contendere in Case 6CA17854 of theft of property in violation of Penal Code section
23 484(a).

24 18. On or about July 17, 2006, respondent was sentenced in Case
25 6CA17854 to probation for a term of twelve (12) months, to pay a fine, including
26 restitution and assessments in the amount of \$656.00, and to stay away from the
27 University of Southern California University Hospital.

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1 SECOND CAUSE FOR DENIAL OF LICENSE

2 (Conviction of a Crime Involving Theft or Larceny)

3 19. Respondent's application is further subject to denial under section
4 3750, subdivision (d), and Title 16, California Code of Regulations section 1399.370,
5 subdivision (b), in that he has been convicted of a crime involving theft or larceny, as
6 more particularly described in paragraphs 15 through 18, above, which are hereby
7 incorporated by reference and realleged as if fully set forth herein.

8 THIRD CAUSE FOR DENIAL OF LICENSE

9 (Commission of a Fraudulent, Dishonest or Corrupt Act)

10 20. Respondent's application is further subject to denial under section
11 3750, subdivision (j), in that he has committed a fraudulent, dishonest or corrupt act, as
12 more particularly described in paragraphs 15 through 18, above, which are hereby
13 incorporated by reference and realleged as if fully set forth herein.

14 PRAYER

15 WHEREFORE, Complainant requests that a hearing be held on the matters
16 herein alleged, and that following the hearing, the Board issue a decision:

17 1. Denying the application of John H. Elhami for a Respiratory Care
18 Practitioner License;

19 2. Directing John H. Elhami to pay the Respiratory Care Board of
20 California the costs of the investigation and enforcement of this case, and if placed on
21 probation, the costs of probation monitoring; and

22 3. Taking such other and further action as deemed necessary and
23 proper.

24 DATED: January 13, 2009

25 Original signed by Liane Zimmerman for:
26 STEPHANIE NUNEZ
27 Executive Officer
28 Respiratory Care Board of California
 State of California
 Complainant